

JUL 30 1984

ALEXANDER L. STEVAS,  
CLERK

No. 83-2140

---

IN THE SUPREME COURT  
OF THE UNITED STATES  
OCTOBER TERM, 1984

---

MURRAY CITY, SCOTT  
ROBINSON, GARY REID  
and JOHN DOES 1 through 20,

Petitioners,

-vs-

CRAIG K. MISMASH,

Respondent.

---

RESPONDENT'S BRIEF IN OPPOSITION

---

MARY C. CORPORON\*  
CORPORON & WILLIAMS  
142 East 200 South, Suite 300  
Salt Lake City, Utah 84111  
Counsel for Respondent

\*COUNSEL OF RECORD

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF FACTS.....	2
REASONS THE WRIT SHOULD BE DENIED.....	3
1. The decision below comports with the prior decisions of this Court regarding the application of statutes of limitations in civil rights actions.....	4
2. Reasons cited by Petitioners in their Petition for granting the writ are not sound.....	6
3. The rejected Utah statute of limitations is inconsistent with the Constitution and laws of the United States, and it was appropriate for the Tenth Circuit to reject application of that statute...	14
CONCLUSION.....	17



## TABLE OF AUTHORITIES

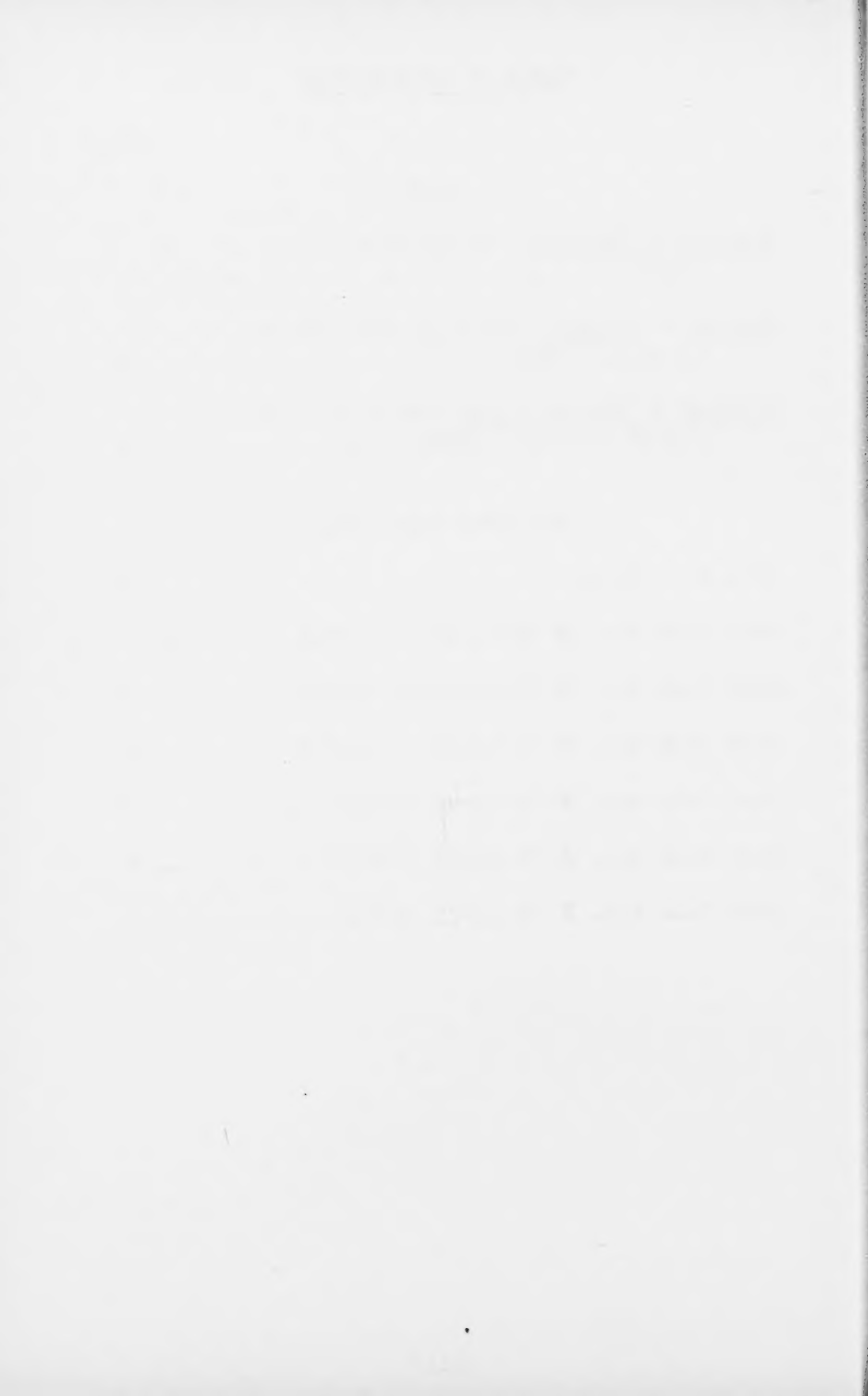
### Page

#### CASES

<u>Burnett v. Grattan</u> , 52 LW 4916, (June 27, 1984).....	4, 6, 9, 10, 14, 15, 16
<u>Garcia v. Wilson</u> , 731 F.2d 640, (Tenth Circuit, 1984).....	6
<u>Mismash v. Murray City</u> , 730 F.2d 1366, (Tenth Circuit, 1984).....	1

#### STATUTES AND CODES

42 U.S.C. §1983.....	2
Utah Code Ann. § 78-12-29(4) (1953).....	3, 5
Utah Code Ann. § 78-12-25(2) (1953).....	3
Utah Code Ann. § 78-12-29(1) (1953).....	5
Utah Code Ann. § 78-12-28 (1953).....	5
Utah Code Ann. § 78-12-26 (1953).....	5
Utah Code Ann. § 78-12-25 (1953).....	5



---

IN THE SUPREME COURT  
OF THE UNITED STATES  
OCTOBER TERM, 1984

---

No. 83-2140

MURRAY CITY, SCOTT  
ROBINSON, GARY REID  
and JOHN DOES 1 through 20,

Petitioners,

-vs-

CRAIG K. MISMAH,

Respondent.

---

RESPONDENT'S BRIEF IN OPPOSITION

---

The Respondent respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the Tenth Circuit's opinion in this case. That opinion is recorded at 730 F.2d 1366 (Tenth Circuit, 1984). (See App. A, Petitioner's Brief)

## STATEMENT OF FACTS

This lawsuit was brought by Respondent in the United States District Court for the District of Utah pursuant to 42 U.S.C. Section 1983 alleging that the Defendant, Murray City, and two of its police officers, SCOTT ROBINSON and GARY REID, had arrested him and interrogated him and that pursuant to that interrogation, the officers had beaten him, kicked him and choked him, all in an effort to elicit a confession. Respondent charged that these actions of the Petitioners violated his constitutional right to due process.

Petitioners filed a Motion for Summary Judgment in the District Court requesting that the cause of action be dismissed because it had been filed more than one year after the alleged violation of Respondent's rights to due process. The District Court granted the dismissal by applying as the statute of limitations in this case the Utah statute regarding claims for assault, battery and false arrest. Said statute is found

at Utah Code Annotated, Section 78-12-29(4), (1953) and is cited in Petitioner's Appendix E.

The Tenth Circuit Court of Appeals reversed, holding that the statute of limitations for Utah governing assault, battery and false imprisonment was not the appropriate and analagous statute of limitations to be applied to this Section 1983 action. The Court, characterizing all Section 1983 actions as ones involving injuries to the rights of another, and finding no Utah statute specifically limiting actions of that nature, applied the four-year "catch all" residual statute for actions "not otherwise provided for by law." Utah Code Annotated, Section 78-12-25(2), (1953). It is important to know that, in the state of Utah, there is no specific statute of limitations for negligence actions, and the four-year statute applied by the Tenth Circuit in this case is also the statute of limitations for negligence actions.

REASONS THE WRIT SHOULD BE DENIED

1. The decision below comports with the prior decisions of this Court regarding the application of statutes of limitations in civil rights actions.

It is well settled that Section 1983 of the Civil Rights Acts does not contain a statute of limitations for actions brought pursuant to that act. Therefore, it becomes the duty of the courts, in Section 1983 cases, to apply appropriate state statutes of limitations to Section 1983 actions. In the recent decision of this Court in Burnett v. Grattan, 52 LW 4916 (June 27, 1984), the Court described variously the state statute which must be selected for Section 1983 as the "most appropriate state statute of limitations," the "state law of limitations governing an analagous cause of action," and "that period of limitations which the State would apply if the action had been brought in the state court."

The court below was confronted with no fewer than five possible applicable statutes of limitations in the instant case. All five such statutes of limitations are adequately cited

in Appendix E of the Petitioner's brief. These possible statutes of limitations are the one-year statute of limitations governing actions for liabilities created by the statutes of foreign states, [Utah Code Annotated, Section 78-12-29(1), (1953)], the one-year statute of limitations governing assault and battery actions, [Utah Code Annotated, Section 78-12-29(4), (1953)], the two-year statute of limitations governing actions against law enforcement officers incurred "by the doing of an act in his official capacity, and in virtue of his office," [Utah Code Annotated, Section 78-12-28, (1953)], the three-year statute of limitations governing actions for a liability created by the statutes of the state [Utah Code Annotated, Section 78-12-26, (1953)], and the four-year statute of limitations governing actions not otherwise provided for by law [Utah Code Annotated, Section 78-12-25, (1953)].

After confronting this array of possible statutes of limitations, the court below, rely-

ing upon its decision in a companion case, Garcia v. Wilson, 731 F.2d 640 (Tenth Circuit, 1984) chose to apply the four-year "catch all" statute.

Nothing in this decision of the Tenth Circuit is in any way in opposition to prior decisions of this Court governing the selection of statutes of limitations in civil rights matters. There is absolutely nothing wrong with the selection of a residuary or "catch all" statute over a more specific statute of limitations in civil rights actions. This Court, in its recent Burnett decision, supra, upheld the application of a three-year Maryland residuary statute in a Section 1983 action. Petitioners have presented absolutely no reason in their Petition why the Court's application of a four-year statute over a one-year statute below has been in any way inconsistent with the Constitution and laws of the United States.

## 2. Reasons cited by Petitioners in their

Petition for granting the writ are not sound.

Petitioners in their Petition for Writ of Certiorari to this Court have presented several theories which they claim support their Petition.

First, Petitioners claim that the Circuit Courts must look to the underlying factual nature of a civil right litigant's claim in establishing the appropriate and applicable statute of limitations. No decision of this Court has stated that civil rights litigants must look to the underlying facts of their case rather than to other aspects of their cause of action (for example, underlying legal theories) in establishing the statute of limitations. The mere fact that some circuits, as cited by Petitioners, have chosen to look at the underlying facts to select an analogous state statute of limitations does not bar the Tenth Circuit from looking to other factors if it so chooses.

Second, Petitioners are concerned about the reasons for the Tenth Circuit's adoption of the four-year statute of limitations in the

instant case. Petitioners cite what they claim to be the Tenth Circuit's desire for uniformity of decisions, the Tenth Circuit's characterization of Section 1983 actions as complex and constitutional in nature and the Tenth Circuit's finding that it is often difficult to choose an analogous state statute of limitations in a civil rights action as reasons of the Tenth Circuit which are inappropriate for selection of the statute of limitations in the present case.

None of these reasons cited by the Tenth Circuit in making its decision in the present case is in any way in conflict with prior decisions of this Court. No decision of this Court has indicated that it is inappropriate for a circuit to seek uniformity of decisions within its own circuit regarding civil rights matters or any other kinds of litigation. A concern and a desire on the part of the Tenth Circuit for uniformity of decisions within its own

circuit is in fact laudable. (It is interesting to note that Petitioners, in fact, cite conflict of decisions among the circuits regarding statutes of limitations in civil rights cases and a need for uniformity among the circuits as a reason for their own Petition now before the Court.)

The lower court's characterization of civil rights actions as complex and constitutional in nature is also not a characterization which is in conflict with prior decisions of this Court. In fact, in the Burnett decision, supra, this Court itself characterized civil rights actions as complex and unique in nature.

In civil rights acts, Congress established causes of action arising out of rights and duties under the Constitution and federal statutes. These causes of actions exist independent of any other legal or administrative relief that may be available as a matter of federal or state law. They are judicially enforceable in the first instance. The statutes are characterized by broadly inclusive language. They do not limit who may bring suit, do not limit the cause of action to a circumscribed set of facts, not do they proclude money damages or injunctive relief. An appropriate limitations period must be responsive to these characteristics of litigation

under the federal statutes. A state law is not 'appropriate' if it fails to take into account practicalities that are involved in litigating federal civil rights claims and policies that are analogous to the goals of the Civil Rights Act." Burnett v. Grattan, 52 LW 4916, 4918, (June 27, 1984)

The lower court in the instant case, in recognizing the unique and complex nature of Section 1983 actions, chose to apply a four-year residuary statute of limitations over a one-year assault and battery statute of limitations. Nothing in this decision is inappropriate. In fact, the decision takes into account the very factors of complexity of the action which are set forth and considered in this Court's recent Burnett decision.

It is also not error for the lower court to cite the difficulty in choosing analogous state statutes of limitations as a reason for selecting a residuary statute over what may appear to be a more specific statute. The wide array of available statutes in the instant case has already been cited for this Court. Even if the court below chose to rely upon the

underlying facts of the instant case, as urged by Petitioners, and chose to apply a more specific and restrictive statute over a more general and less restrictive statute, the lower court would still be confronted with at least two statutes of limitations. One is the assault and battery statute of limitations of one year. The other is the two-year statute of limitations for police officer misconduct. The one-year statute of limitations would bar the instant action. The two-year statute of limitations would permit the instant action to proceed. The underlying facts of this case involve an alleged beating at the hands of police officers during arrest and interrogation. Respondent submits that it is virtually impossible to distinguish whether the facts of the case would mandate application of the one-year assault and battery or the two-year police office misconduct statute. It makes perfect sense, in the final analysis, that the Tenth Circuit would

choose to look beyond the facts themselves to the underlying nature of the claim as one for injury to the rights of another and apply the Utah statute of limitations which would be applicable to such a cause of action, or the four-year statute of limitations. Nothing in this choice in any way violates the mandates of prior decisions from this Court.

Further, Petitioners seem concerned that the decision below erodes the power of the Utah state legislature to adopt appropriate statutes of limitations for the torts of assault, battery and false imprisonment. This is simply not the case. The main concern of the courts in applying statutes of limitations in Section 1983 causes of action should be the furtherance of the laws of Congress, the Constitution of the United States, and the decisions of the federal courts interpreting those laws and that Constitution. The goals of the federal civil rights statutes are clearly not the province or concern of the Utah state legislature.

If that legislature chooses to adopt various statutes of limitations for various state causes of action, that is the state legislature's business. However, the actions of that legislature do not constitute the final word in this or any other federal civil rights cause of action.

Finally, Petitioners continue to refer in their Petition to the present cause of action as one for assault and battery. This is neither a fair nor an accurate characterization of the Respondent's cause of action. The Respondent's case is one for violation of his rights to due process and involves an allegation that this violation of his rights occurred at the hands of police officers who used very brutal methods to interrogate him and attempt to elicit information or a confession from him. The facts of the present case go far beyond a question of whether or not the Respondent's nose was merely grazed or whether he was beaten multiple times. The question goes far beyond the mere right of an individual to be

free in his person from violent acts of another. It goes to the right of the individual to be free from undue governmental interference in his life, including his right not to be beaten by representatives of his government in the name of the government. The cause of action is not simply one for assault and battery, and the refusal of the Tenth Circuit to characterize Respondent's cause of action as merely one for assault and battery and false arrest was appropriate.

3. The rejected Utah statute of limitations is inconsistent with the Constitution and laws of the United States, and it was appropriate for the Tenth Circuit to reject application of that statute.

As set forth in the Burnett decision, supra, there are three steps to applying the appropriate statute of limitations in the present case. First, the courts are to look at the laws of the United States so far as such laws are suitable to carry the civil and criminal civil right statutes into effect. Second, if no suitable federal rule exists, the courts are then to undertake application of state common

law as modified and changed by the Constitution and statutes of the forum state. The final and third consideration asserts the predominance of the federal interest. The courts are to apply state law only if it is not inconsistent with the Constitution and laws of the United States.

Moreover, the Burnett decision clarifies the goals of the federal civil rights statutes so as to clarify what is and is not inconsistent with the Constitution and the laws of the United States with regard to the civil rights statutes. The Court has stated that the central objective of the Reconstruction-Era Civil Rights Statutes is to insure "that individuals whose federal constitutional or statutory rights are abridged, may recover damages or secure injunctive relief." Burnett v. Grattan, 42 LW 4916, 4919, (June 27, 1984.)

The Court has further described the goals of the federal civil rights statutes in the Burnett decision as "compensation of persons whose civil rights have been violated, and

prevention of the abuse of state power." Burnett v. Grattan, 52 LW 4916, 4919, (June 27, 1984).

As has already been noted above, the Burnett decision also recites the Court's finding of the complex nature of Section 1983 actions and the broad remedial purpose of Section 1983 actions.

The statute of limitations sought to be adopted by Petitioners in this case is a one-year statute of limitations. A one-year statute of limitations is simply too short, per se, to preserve the broad remedial purpose of Section 1983, to allow for the complex nature of Section 1983 litigation, and to preserve the main goal of federal civil rights statutes, namely the compensation of persons whose civil rights have been violated and/or the prevention of the abuse of state power.

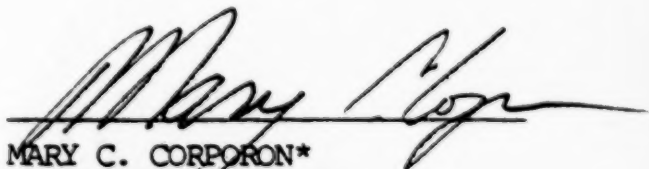
The inappropriately short nature of the statute of limitations urged by Petitioners is even more apparent when it is considered that statutes of limitations of two, three or four years apply to the same set of underlying facts.

Application of the one-year statute of limitations urged by Petitioners would have been inconsistent with the Constitution or the laws of the United States, and therefore improper. The Tenth Circuit Court of Appeals did not err in applying the four-year statute of limitations which it adopted.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted this 27 day of July, 1984.



MARY C. CORPORON\*  
CORPORON & WILLIAMS  
142 East 200 South, Suite 300  
Salt Lake City, Utah 84111  
(801) 328-1162

\*COUNSEL OF RECORD